IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 872 of 2007

R.S.R.T.C.& ANR
V/S
SHANKER LAL & ANR

Mr. BS BHATI, for the appellant / petitioner

Mr. KULDEEP MATHUR, for the respondent

Date of Order : 23.11.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

The matter comes up for final order on stay. However, with the consent of both the learned counsel, matter was heard finally.

Aggrieved by the award of the Labour Court, appellant – Corporation preferred a writ petition, alleging that the learned Labour Court wrongly interfered in the order of dismissal. It was contended that on the basis of the evidence adduced by the parties before the Labour Court, workman was found guilty of misconduct of having six passengers without ticket. However, looking to the amount involved therein, learned Labour Court set aside the order of dismissal and ordered for reinstatement of the workman with 50% back wages. The challenge to the award was made mainly referring to the judgment of the Hon'ble Apex Court on the issue.

Considering the merit of the case in reference to the judgment of Hon'ble Supreme Court in the case of Karnataka State Road Transport Corporation Vs. B.S. Hullikatti (2001) 2 SCC 574 and also in the matter of Regional Manager, RSRTC Vs. Ghanshyam Sharma (2002) 10 SCC page 330, the learned Single Judge was of the opinion that the employee was not fit to be reinstated however, looking to the fact that pursuant to the impugned award dated 07.12.1994, the workman was reinstated in service on 05.01.1996. The award was modified by maintaining the reinstatement but imposing a sum of Rs. 30,000/- as penalty on the workman for his delinquency apart from denial of back wages. The learned Single Judge had also considered the subsequent conduct of the employee, where he was found involved in the similar delinquency of carrying passengers without ticket and the corporation had awarded punishment in terms of fine, which otherwise has been narrated at page 6 and 7 of the judgment and quoted hereunder :-

"CHART SHOWING MISCONDUCT COMMITTED BY RESPONDENT WORKING AFTER JOINING HIS DUTIES.

Charge-sheet Nos. & dates.	Charges.	Penalties Imposes.	Order Nos. & dates.
1. 1176 dt.23.3.98	Found carrying 2 passengers without Tickets	fine of Rs.3000/	1520 dt. 30.3.99

2. 6007 dt.15.10.99	found carrying 5 passengers without Tickets	fine of Rs.3000/	7054dt. 4.12.01
3. 6006 dt.15.10.99	deposited Rs.100 less in Corporation	fine of Rs.500/	7853 dt. 4.12.01
4. 5757 dt.5.10.01	found carrying 5 passengers without Tickets	fine of Rs.3000/	7637 dt. 6.12.01
5. 2085 dt.20.3.03	Due to his full absence a route of 250 km. was cancelled by which huge financial loss was caused to the corporation	fine of Rs.1750	5101 dt. 9.7.03
6. 3466 dt.13.5.03	Due to his Will full absence a route to 250 km. was cancelled by which huge financial loss was caused to the corporation.	fine of Rs.1750/	2894 dt. 15.4.04

According to the learned Single Judge when corporation itself has not pass an order of dismissal in regard to the delinquencies as quoted above, then it is proper to maintain order of reinstatement with imposition of penalty and denial of back wages.

Learned counsel appearing for Corporation submitted that in light of the judgment of Hon'ble Apex

Court, order of reinstatement cannot be maintained more specifically when, even after reinstatement, the conduct of the employee remained the same. It was thus urged that the judgment of the learned Single Judge and the award of the learned labour Court deserves to be set aside.

Per contra, counsel for the non-applicant submits that in light of the facts available to the record, when the employee was reinstated on 05.01.1996 and he was continued by the corporation itself even after taking note of the subsequent delinquencies then the fact of his delinquency, as involved in the present matter was rightly been given treatment looking to the fact of reinstatement more so when three is imposition of penalty to the tune of Rs. 30,000/- by learned Single Judge apart from denial of the of back-wages of the intervening period. It was thus, prayed that the judgment of learned Single Judge should be maintained.

We have considered the rival submissions of the parties and gone through the record. In view of the Judgments of the Apex Court referred above, it is settled law that a Conductor, as involved in the delinquency of carrying passengers without tickets and the charges found to be proved then the punishment of dismissal is not disproportionate. In the light of those judgments, a person cannot be given benefit of reinstatement, even if during

the pendency of the writ petition, interim order was not passed in favour of the employer and the employee was reinstated. The basic issue remains as to whether the interference of the learned labour Court under Section 11A of the Industrial Disputes Act is warranted in the cases of misconduct of a Conductor, carrying passenger without ticket.

We are of the view that in the light of the judgments of Hon'ble the Supreme Court referred to in the judgment of the learned Single Judge so also consistently upholding the same view even in the judgments in U.P.S.R.T.C Vs. Mahendra Nath Tiwari & Anr., reported in JT 2005(10) SC 209 and U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal reported in JT 2006(12) SC 412, it has been held that when the charge against the employee was held to be proved then neither labour Court nor learned Single Judge should have interfered in the order of dismissal in a case of present nature. It may be observed here that a compassion was invoked before the learned Single Judge, which did prevail before the learned Single Judge on the basis of the fact that after passing of the award since there was no interim stay by this Court, the employee had been reinstated but then that compassion is also misplaced in view of even subsequent consistent conduct of the employee as noticed by the learned Single Judge. May be that for the subsequent delinquencies the employer imposed the punishment as noticed by the learned

Single Judge, but then the fact does remain that in view of the judgments of Hon'ble the Supreme Court even the delinquencies found resulting into impugned order of dismissal did not permit any interference and obviously could not attract any compassion. It is writ large that even for attracting compassion, the employee has not at all improved his conduct.

We are accordingly, of the view that the award passed by labour Court as modified by the learned Single Judge deserves to be quashed and set aside.

In view of the above discussion, the award of the labour Court dated 07.12.1994 and judgment of the learned Single Judge dated 26.04.2007 are set aside. The order of punishment is upheld and the appeal is accordingly allowed with the order as no cost.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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